THIRUPATHY SINNADURAI

v.

DAFFOLAND DEVELOPMENT SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[APPEAL NO: R3-12-20-1999]
5 FEBRUARY 2001

EVIDENCE: *Admissibility of - Documentary evidence - Judgment and grounds of judgment - Whether documents embossed with seal of the High Court - Evidence Act ss. 2, 3, 61, 62 - Subordinate Courts Rules 1980 O. 25*

The plaintiff/respondent in the Sessions Court obtained an order to admit and receive the judgment of the Shah Alam High Court and a document containing the grounds of judgment exhibited in a supporting affidavit without further proof pursuant to O. 25 r. 10 of the Subordinate Court Rules 1980 (SCR).

The defendant/appellant appealed against the order granted by the Sessions Court judge on the grounds that such documents were not within the meaning of O. 25 r. 10(2) of the SCR.

Held:

[1] It is common knowledge and we can take judicial notice of the fact that the seal of the High Court and the seals of other courts are normally embossed by a stamping device on a document which is required to be filed in the registry of the relevant courts. The seal gives official status to the document. (p 763 h)

[2] On the facts of the case, neither document purports to be sealed with the seal of the High Court and to be a copy of a document filed in, or issued in one of the High Courts. (p 764 c-d)

[Appeal allowed.]

Legislation referred to:
Evidence Act 1950, ss. 2, 3, 61, 62, 73A
Subordinate Court Rules 1980. O. 10 r. 2(2), O. 25 r. 10(2), O. 29 rr. 2, 5(1), O. 52 r. 3(2), O. 53 r. 6, form 76

For the appellant - K Surendran; M/s Sothi & Ang
For the respondent - HK Wong; M/s Wong Som Nuck & Co

Reported by Mariette Peters-Goh

JUDGMENT

KC Vohrah J:

The respondent (the plaintiff) in the Kuala Lumpur Sessions Court obtained an order to admit and receive the judgment of the Shah Alam High Court Originating Summons No. 24-971-95 dated 19 February 1998 and a document containing the grounds of judgment of Faiza Tamby Chik J which were exhibited in a supporting affidavit without further proof pursuant to O. 25 r. 10 of the Subordinate Court Rules 1980 (SCR). The defendant in that case has appealed against the decision of the judge of the Sessions Court who gave the order.

In the court below the plaintiff had not only applied for the said judgment and the document containing the grounds of judgment to be admitted and received without any further proof but also for certain findings of material facts by Faiza Tamby Chik J to be binding upon the parties without further proof. The additional prayer was not granted.

The defendant (the appellant in this case) objects to the admission of the judgment of the high court as well as to the document containing the grounds of judgment of Faiza Tamby Chik J.

The argument of the defendant is that these documents admitted by the judge of the sessions court are inadmissible as the documents are not court documents within the meaning of O. 25 r. 10(2) of the SCR and that ss. 61, 62, 73A, 2 and 3 of the Evidence Act 1950 do not apply in the case.

Rule 10(2) O. 25 of the SCR reads as follows:

> 10 (1) ...
>
> (2) Without prejudice to the provisions of any written law, every document purporting to be sealed with the seal of the High Court or any Subordinate Court shall be reviewed in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of the High Court or any Subordinate Court shall be deemed to be a copy of that document without further proof unless the contrary is shown.

It is common knowledge and we can take judicial notice that the seal of the High Court and the seals of the other courts are normally embossed by a stamping device on a document which is required to be filed in the registry of the relevant courts. The seal gives official status to the document. It will be noted that under O. 53 r. 6 SCR that "every document issued by the registry for which a form marked with the word 'seal' is prescribed in schedule A must bear the seal of the court." And O. 52 r. 3(2) provides that any document "filed in the registry in any proceedings must be sealed with a seal showing

the date on which the document was filed ... .” Under O. 29 r. 5(1) SCR if, in the case of any judgment, a form thereof is prescribed in Form 76 the judgment must be in that form. Form 76 requires the court’s seal to be affixed. As for a written judgment, the original or a copy thereof, signed by the judge must be filed under O. 29 r. 2. There does not appear to a requirement for it to be sealed. There are equivalent provisions in the Rules of the High Court.

Now we turn to the provision relied upon by the plaintiff O. 25 r. 10(2) which was reproduced earlier. To be noted is that it is a provision which prescribes certain conditions to be fulfilled before the provision can be raised and applied.

The provision relates to a “document purporting to be sealed with the seal of the High Court or any – Subordinate Court ...” Here the plaintiff exhibited the judgment of the High Court dated 19 February 1998 and also the document constituting the written grounds of judgment of the High Court judge. Neither is a “document purporting to be sealed with the seal of the High Court and to be a copy of a document filed in, or issued in one of the High Courts ... .” I do not see how O. 10 r. 2(2) can at all be invoked to allow the court to deem either to be a copy of a document filed without further proof.

I have only dealt with the two documents as I have seen them exhibited in the affidavit supporting the application raised under O. 25 r. 10(2) and I express no opinion as to their admissibility under other provisions under any law relating to procedure and evidence.

Appeal allowed with costs.